



**RE: Performance Guarantee**  
**Trueblood, Craig** to: Clifford Villa

11/13/2009 12:27 PM

1 attachment



Financial Assurance Letter (CD Exhibit E) == 11-13-09.pdf

here you go

-----Original Message-----

From: Villa.Clifford@epamail.epa.gov  
[mailto:Villa.Clifford@epamail.epa.gov]  
Sent: Friday, November 13, 2009 12:17 PM  
To: Trueblood, Craig  
Subject: RE: Performance Guarantee

We crossed in the email. BNSF financial form below  
is fine. Send me a  
clean copy and I'll include it in the package.

Thanks.

Cliff Villa  
Assistant Regional Counsel  
U.S. EPA Region 10

To "Trueblood,  
Craig"  
<craig.trueblood  
@klgates.com>  
Gail" "Wurtzler,  
<Gail.Wurtzler@dgsllaw.com>,  
11/13/2009 12:09 Clifford  
Villa/R10/USEPA/US@EPA  
PM  
cc  
<Darrell.Early@deq.idaho.gov>,  
Robert" "Lawrence,  
<Robert.Lawrence@dgsllaw.com>,  
Sarah (ENRD)" "Himmelhoch,  
<Sarah.Himmelhoch@usdoj.gov>  
Subject  
Guarantee RE: Performance

I vetted the form with BNSF and their accountants (PWC) a while back. Attached is what I sent you previously (back in July). I am hoping this still works. The skids are greased in Fort Worth to get this signed within 30 days after the Court signs the CD, so if this is no longer what you want we need to talk ASAP.

On another note, BNSF was served 11/3 through CT. I am going to file and serve the attached Notice of Appearance today or Monday but here is an advance copy.

From: Wurtzler, Gail [mailto:Gail.Wurtzler@dgsllaw.com]  
Sent: Friday, November 13, 2009 11:51 AM  
To: Villa.Clifford@epamail.epa.gov  
Cc: Darrell.Early@deq.idaho.gov; Trueblood, Craig; Lawrence, Robert; Himmelhoch, Sarah (ENRD)  
Subject: RE: Performance Guarantee

Cliff,

Based on my notes and some emails we exchanged on or about August 3, 2009, I believe that we agreed to make the language change to the independent CPA letter form that is marked on the pdf you attached and that otherwise that form and the CFO form would be the same as the EPA forms at the link you provided several months ago. Per paragraph 48 of the CD, we plan to submit the final signed forms within 30 days after the court enters the CD. Let me know if this does not answer your question. Thanks.

Gail

From: Villa.Clifford@epamail.epa.gov [mailto:Villa.Clifford@epamail.epa.gov]  
Sent: Friday, November 13, 2009 12:32 PM  
To: Wurtzler, Gail; Lawrence, Robert; craig.trueblood@klgates.com

Cc: SHimmelh@enrd.usdoj.gov;  
Darrell.Early@deq.idaho.gov  
Subject: Performance Guarantee

Gail, all - Do you remember where we are on this? It is listed in the CD as Appendix E. At the moment, it is the only appendix I'm still missing.

As for attachments to the SOW, just waiting on final RADs for the Wallace Yard. I know Sara is working on that presently.

Cliff Villa  
Assistant Regional Counsel  
U.S. EPA Region 10  
----- Forwarded by Clifford Villa/R10/USEPA/US on  
11/13/2009 11:26 AM  
-----

"Wurtzler,  
Gail"  
<Gail.Wurtzler  
@dgslaw.com>

To

Clifford Villa/R10/USEPA/US@EPA

cc

08/03/2009  
09:49 AM

"Lietz, Denise"

"Lawrence, Robert"

<Darrell.Early@deq.idaho.gov>,  
<craig.trueblood@klgates.com>,  
<denise.lietz@klgates.com>,  
<Robert.Lawrence@dgslaw.com>,  
<Sarah.Himmelhoch@usdoj.gov>

Subject

Wallace Yard and Spur Lines Site  
- Preparing final documents

CONFIDENTIAL SETTLEMENT COMMUNICATION  
SUBJECT TO FRE 408

Cliff,

This morning I received a request through UPRR from Deloitte Touche, UPRR's independent CPA, regarding a correction in terminology for the independent CPA letter for financial assurance. I was told that auditing is done under Public Company Accounting Oversight Board standards, not US GAAP. US GAAP applies to reporting, not auditing. For that reason, Deloitte would like to change the language in numbered paragraph 1 in the CPA letter as shown on the attached PDF. Please let me know as soon as possible whether that change will be permitted.

Also, Bob and I have read your late Friday email (although not yet the attachments) and noted that it did not include the final version of the RAD Drawings on the list of items to include in the signature package. Those drawings also need to be included in the signature package. As we have all discussed many times, it is essential that we have a complete package with all components of the settlement to present to UPRR management for final approval and signature.

Bob and I will communicate further after we review the attachments to your email. You should anticipate that we will have comments on the environmental covenant exhibit. In order to comply with Section XI of the CD, the parties need to do more than add EPA to Idaho's form.

Thanks.

Gail Wurtzler  
Davis Graham & Stubbs LLP  
1550 Seventeenth Street  
Suite 500  
Denver, CO 80202  
(303) 892-7405  
gail.wurtzler@dgsllaw.com

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----- Message from "Trueblood, Craig"  
<[craig.trueblood@klgates.com](mailto:craig.trueblood@klgates.com)> on  
Fri, 24 Jul 2009 05:47:59 -0800 -----

To: <[Villa.Clifford@epamail.epa.gov](mailto:Villa.Clifford@epamail.epa.gov)>

Subject: Wallace Yard and Spur Lines

I have had BNSF working on the financial assurance letter as we continued to negotiate the scope of the CD. Attached is what we would propose for BNSF as Exhibit F.

<<Financial Assurance Letter (draft) ==  
07-24-09.doc>> (See attached  
file: Financial Assurance Letter (draft) ==  
07-24-09.doc)(See attached  
file: Notice of Appearance == 11-12-09.pdf)